

	TASK	Est Term	Total Days	Due
Submerged Land	Draft SCR Work Plan Submittal	30	270	28-Sep-14
	VDEQ Review	45	315	12-Nov-14
	KM Revisions, Final Submittal*	30	345	12-Dec-14
	SCR Field Investigation	180	525	10-Jun-15
	Draft SCR Report Submittal	180	705	7-Dec-15
	VDEQ Review	60	765	5-Feb-16
	KM Revisions, Final Submittal*	45	810	21-Mar-16
	Draft RAWP Submittal	195	1005	2-Oct-16
	VDEQ RAWP Review	60	1065	1-Dec-16
	KM Revisions, Final RAWP Submittal*	60	1125	30-Jan-17
	Public Notice	60	1185	31-Mar-17
	Permitting**	180	1365	27-Sep-17
	Remedy Construction	270	1635	24-Jun-18
	Demonstration of Completion Submittal	120	1755	22-Oct-18

VDEQ	Demonstration of Completion Evaluation, Public Notice, and Issuance of Certificate	150		21-Mar-19
------	--	-----	--	-----------

\* Assumes VDEQ comments are received within specified time period, are not significant and do not require additional time for a response. Delays in receipt of comments from VDEQ will result in automatic extension of all subsequent KM deadlines by an equivalent number of days.

\*\* Includes any non-VDEQ permits necessary to authorize remedy construction (e.g. local building permits, U.S. Army Corps of Engineers Section 404 dredge and fill permits, etc.)

Upon written request by KMVLT, VDEQ may approve changes to this schedule. Reasonable requests for extension of scheduled completion dates shall be granted for good cause.

All submittals of work plans, reports, notices, and other documents required under this Agreement shall be sent by email, certified mail (return receipt requested), by overnight delivery, or by courier. KMVLT shall send one electronic copy to each of the Project Coordinators identified in **Section 13**. All electronic copies shall be in a format that is searchable and can be readily copied. Upon request, KMVLT shall submit additional hard copies of large, odd sized, or hard to reproduce files, figures, documents or other deliverables that KMVLT is required to submit.

All Work performed pursuant to this Agreement is subject to VDEQ review and approval. If VDEQ determines that any document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect human health or the environment, VDEQ may: a)

return comments to KMVLT with recommended changes; or b) modify the document in consultation with KMVLT and approve the document as modified.

VDEQ shall conduct and complete its reviews and approvals on a timely basis in accordance with the schedule set forth herein. If VDEQ fails to timely complete its review, KMVLT shall be entitled to a refund of the portion of administrative costs paid to finance VDEQ's review under Section 19 of this Agreement.

## **SECTION 9: STANDARD OF PERFORMANCE, QUALITY ASSURANCE**

KMVLT shall ensure that the investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) performed under this Agreement comply with all applicable federal and state regulations, and shall implement such measures as may be necessary to ensure that the Work does not result in a further release of contaminants to the environment and is performed in a manner protective of human health and the environment. All sampling activities shall be performed in accordance with Test Methods for Evaluating Solid Waste, USEPA SW-846, revised April 1998, or other methods approved by the VDEQ.

A Quality Assurance/Quality Control Project Plan shall be provided in the Site Characterization Report and Remedial Action Work Plan and shall be made available for review by VDEQ. These plans shall include, but not be limited to, data quality objectives, laboratory analytical procedures, identification and use of Virginia Environmental Laboratory Accreditation Program laboratories, field equipment maintenance and calibration, sampling procedures, and record keeping and data assessment procedures. Each Quality Assurance and Quality Control Project Plan shall be consistent with EPA requirements and technical standards.

## **SECTION 10: RETENTION OF RECORDS**

During the pendency of this Agreement and for a minimum of three (3) years after satisfaction of this Agreement, KMVLT shall preserve and retain all non-identical copies of documents, records, and other information, including documents, records, or other information in electronic form, now in its possession or control or that come into its possession or control that relate in any manner to the remedial action with respect to the Site, regardless of any document retention policy to the contrary. Until three (3) years after satisfaction of this agreement, KMVLT shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the remedial action. KMVLT shall provide immediate access to all such records and information upon VDEQ written request.

## **SECTION 11: FORCE MAJEURE**

KMVLT agrees to perform all requirements of this Agreement within the time limits established under this Agreement unless the performance is delayed by a *force majeure* event. For purposes of this Agreement, *force majeure* is defined as any event arising from causes beyond the control of KMVLT or of any entity controlled by KMVLT, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this

Agreement despite KMVLT's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to perform the remedial or increased cost of performance.

If any event occurs or has occurred that may delay the performance of any obligation under this Agreement, whether or not caused by a *force majeure* event, KMVLT shall notify VDEQ orally within forty-eight (48) hours of when KMVLT first knew or should have known that the event might cause a delay. Within seven (7) days thereafter, KMVLT shall provide to VDEQ in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; KMVLT's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of KMVLT, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude KMVLT from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

If VDEQ agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Agreement that are affected by the *force majeure* event will be extended by VDEQ for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If VDEQ does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, VDEQ will notify KMVLT in writing of its decision. If VDEQ agrees that the delay is attributable to a *force majeure* event, VDEQ will notify KMVLT in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

## **SECTION 12: ASSURANCES AND ENFORCEMENT**

The Parties acknowledge and agree that they are entering into this Agreement for the express purpose of ensuring that contamination at and migrating from the Site is remediated to levels deemed protective of human health and the environment, as determined in accordance with 9 VAC 20-160-90. The Parties further acknowledge and agree that KMVLT's voluntary commitment to perform the work required to achieve this objective, and VDEQ's/Board's ability to enforce that commitment, provide a basis on which the U.S. Environmental Protection Agency ("EPA") may defer pursuing a potential listing of the Site or a portion thereof on the National Priorities List pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C § 105. For as long as KMVLT adheres to this Agreement and is progressing towards successful completion of the Work, VDEQ agrees to support and advocate with EPA for such deferral.

Va Code §§ 10.1-1402 (19) and (21) provide VDEQ/Board with the following statutory authority:

- (19) Take actions to contain or clean up sites or to issue orders to require cleanup of sites where solid or hazardous waste, or other substances within the jurisdiction

of the Board, have been improperly managed and to institute legal proceedings to recover the costs of the containment or clean-up activities from the responsible parties.

(21) Abate hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the jurisdiction of the Board.

During the term of this Agreement, and contingent upon full compliance with this Agreement, VDEQ/Board will not exercise any enforcement action against KMVLT for the past releases that are being remediated, as described in **Section 5**, and those contaminant releases subject to the remedial activity by this Agreement. Upon the Board's review and approval, KMVLT shall be issued a Certificate pursuant to 9 VAC 20-160-110 with a grant of all defenses and immunities described therein. In the event KMVLT withdraws from the VRP or materially fails to comply with this Agreement, the Board reserves the right to exercise its authority under the foregoing statute to ensure the purpose of this Agreement is fulfilled.

This Agreement does not constitute a waiver by KMVLT or repudiation by VDEQ/Board of any terms, conditions, requirements or legal accommodation to KMVLT as a Bona Fide Prospective Purchaser pursuant to Va. Code § 10.1-1234(B) and as described in the Bona Fide Prospective Purchaser Letter, BF13-0224, dated April 22, 2013 ("BFPP Letter").

### **SECTION 13: DESIGNATED PROJECT MANAGER**

On or before the effective date of this Agreement, VDEQ and KMVLT shall each designate a project manager. Each project manager shall be responsible for overseeing the implementation of this Agreement. The VDEQ project manager will be the VDEQ/Board-designated representative at the Site. To the maximum extent possible, communications and correspondence (i.e. reports, approvals and other submittals) between KMVLT and VDEQ concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the project managers. During implementation of this Agreement, the respective project managers shall, whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. Each Party has the right to change its respective project manager by notifying the other Party in writing at least five days prior to the change. The project managers designated by the Parties are as follows:

KMVLT:	Richard Steinberg Remediation Manager Richard_Steinberg@kindermorgan.com (713) 369-8032
VDEQ/Board:	Chris Evans Project Manager Superfund and Voluntary Remediation Program chris.evans@deq.virginia.gov